

Date: August 13, 2012



CITY OF BEAVERTON REQUEST FOR QUALIFICATIONS

**Professional Development Training, Facilitation And
Organization Development Services
Solicitation #2706-13B**

**DATE & TIME PROPOSALS ARE DUE:
September 7, 2012, at 2:00 PM**

Envelope(s) shall be sealed and marked with Project Title. Respondents must submit one (1) original and two (2) complete copies of their proposal

Mayor

Denny Doyle

City Councilors

Catherine Arnold

Betty Bode

Ian King

Marc San Soucie

Cathy Stanton

SUBMIT PROPOSAL TO:

City of Beaverton

Purchasing Division

4755 SW Griffith Drive

Beaverton, OR 97005

503-526-2228

This document is available in alternate formats, such as large print, audiotape, oral presentation and electronic format.
To request alternate format, call the City of Beaverton at 503-526-2228 or TDD 503-526-2506.

TABLE OF CONTENTS

<u>SUBJECT MATTER</u>	<u>PAGE</u>
TABLE OF CONTENTS	2
LEGAL ADVERTISEMENT	4
OBTAINING SOLICITATION DOCUMENTS ADDENDA FROM CITY WEB SITE	5
SECTION 1: INTRODUCTION AND BACKGROUND	6
1.1 Information on the City	6
1.2 Introduction	6
SECTION 2: SCOPE OF WORK.....	7
2.1 Scope of Work.....	7
2.2 Competency Areas	7
2.3 General Requirements	8
2.4 Schedule of Work	8
2.5 Procurement Timeline	9
2.6 Pre-Qualification of Proposers.....	9
2.7 Pre-Proposal Conference.....	9
2.8 Single Point of Contact	9
SECTION 3: PROPOSER'S SPECIAL INSTRUCTIONS	10
3.1 Procurement Method	10
3.2 Proposals not available for Public Inspection at the Opening.....	10
3.3 Interpretations and Addenda	10
3.4 Protests	11
3.5 Specification/Term Protest	11
3.5.1 RFQ Protest or Request for Change of Specifications or Terms	11
3.5.2 Exclusion Protest	11
3.5.3 Intent to Award Protest	12
3.6 Business License/Taxpayer ID Number	12
3.7 Contract Administrator	12
3.8 Form of Contract.....	12
3.9 Term of Contract & Availability of Funds.....	13
3.10 Intergovernmental Permissive Cooperative Procurements.....	13
3.11 Nondiscrimination	13
3.12 Public Records.....	13
3.13 Insurance Coverage	14
SECTION 4: PROPOSAL CONTENT & FORMAT	15
4.1 Proposal Format and Administrative Requirements.....	15
4.1.1 Cover Page.....	15
4.1.2 Table of Contents	15
4.1.3 Transmittal Letter	15
4.1.4 Signature Page.....	15

4.1.5	Page Limit	15
4.1.6	Commitment to Sustainability	16
4.1.7	Proposal Submittal Addresses and Number of Original and Copies	16
4.1.8	Submission Deadline	16
4.2.	Minimum Requirements	17
4.3	Substantive Requirements	17
4.3.1	Knowledge and Experience	17
4.3.1.1	Background of the Firm	17
4.3.1.2	Key Personnel	18
4.3.1.3	Subcontractor Qualifications	18
4.3.2	Relevant Experience and References	18
4.3.3	Cost Schedule	19
4.3.4	Availability to Provide Services	20
SECTION 5: PROPOSAL EVALUATION & CONTRACT AWARD		21
5.1	Evaluation Criteria	21
5.2	Preferences	21
5.2.1	ORS 279A.120	21
5.2.2	ORS 279A.125	21
5.3	Responsiveness and Responsible Determination	21
5.3.1	Responsiveness	22
5.3.2	Responsibility	22
5.4	Interviews	22
5.5	Investigation of References	22
5.6	Clarification of Proposals	22
5.7	Contract Award and Related Procedures	23
5.7.1	Award consideration	23
5.7.2	Award Recommendation	23
5.7.3	Insurance certification	23
5.8	Reservation of Rights	23
SECTION 6: SIGNATURE PAGE		24
ATTACHMENT “A” – RETAINER AGREEMENT		1
ATTACHMENT “B” – PROJECT CONTRACT		1

LEGAL ADVERTISEMENT

CITY OF BEAVERTON Request for Qualifications for Professional Development Training, Facilitation And Organization Development Services Solicitation #2706-13B

The City of Beaverton, Human Resources Department is seeking sealed proposals from qualified consultants to provide on-site professional development training, facilitation, and organization development services. Consultants are invited to submit a proposal outlining their experience and qualifications in performing work directly related to the services required.

Sealed proposals will be received until 2:00 pm on September 7, 2012, at the Finance Utility Billing Counter on the second floor at 4755 SW Griffith Dr., Beaverton, Oregon 97005, Attention: Terry L. Muralt, CPPB, Purchasing Agent. There will be no formal opening. Facsimile proposals will not be accepted. Proposals will not be accepted after the stated opening date and time. Late proposals will be returned to the vendor unopened.

Solicitation packets may be downloaded from <http://apps.beavertonoregon.gov/Bids/> or may be obtained at the address listed above or by calling the Bid Line at 503-526-2228.

Proposers are required to certify non-discrimination in employment practices in accordance with ORS 279A.110(4), and identify resident status as defined in ORS 279A.120(1). Pre-qualification of proposer is not required. All proposers are required to comply with the provisions of Oregon Revised Statutes and Beaverton's Contract Review Board Policy.

The City of Beaverton reserves the right (1) to reject any or all proposals not in compliance with public bidding procedures, (2) to postpone award of the contract for a period not to exceed ninety (90) days from date of proposal opening, (3) to waive informalities in the proposals, and (4) to select the proposal which appears to be in the best interest of the City.

PUBLISHED: Daily Journal of Commerce
DATE: August 14, 2012

OBTAINING SOLICITATION DOCUMENTS ADDENDA FROM CITY WEB SITE

TO: All Interested Parties

FROM: City of Beaverton, Purchasing Office

Complete copies of many of the City's solicitations are available for downloading at <http://apps.beavertonoregon.gov/Bids/> (Some solicitations containing oversized documents, such as plans or diagrams, are unavailable for downloading, or are available only in part.)

If you choose to download a solicitation document from the City's Web site, you will be asked to register for future e-mail notification of any addenda issued in connection with the downloaded solicitation.

Even if you do not download solicitation documents from the City's Web site, you can still register to receive e-mail notification of the issuance of an addendum relating to a particular solicitation. To register, go to the City of Beaverton's Bid Registration System, found at <http://apps.beavertonoregon.gov/Bids/>.

Upon receipt of an e-mail notification of the issuance of an addendum you can download the entire addendum from the "Current Bid & Proposal Opportunities" site, located at <http://apps.beavertonoregon.gov/Bids/>.

It is to your advantage to register for e-mail notification of the issuance of an addendum. If you do not receive all addenda issued in connection with a particular solicitation, it is possible the proposal or bid you submit will be incomplete and found non-responsive.

SECTION 1: INTRODUCTION AND BACKGROUND

1.1 Information on the City

The City employs approximately 514 regular employees who serve over 90,000 citizens. Employees work out of eight different City facilities in the Beaverton area. More information about the City can be found at www.beavertonoregon.gov.

1.2 Introduction

The Human Resources Department of the City of Beaverton is seeking consultants qualified to provide on-site professional development training, facilitation, and organization development services as described in Section 2. This is in support of the City's strategic direction of Expanding Organizational Capacity. This strategic direction focuses on developing the City's workforce and attracting and retaining talented personnel. This Request for Qualifications (RFQ) further supports City Council goals to:

- Provide and support a highly qualified and motivated City work force.
- Provide responsive, cost effective service to the community.
- Use City resources efficiently to ensure long-term financial stability.
- Manage growth and respond to change consistent with maintaining a livable, full-service City.

This procurement process is being completed to provide the City of Beaverton with the capability and flexibility necessary to respond to internal professional training needs in a timely manner and on an as-needed basis. This solicitation outlines the information necessary to understand the consultant selection process and the required documentation in submitting proposals. It is the City's intent to execute a Retainer Agreement (see Attachment A) with selected consultants. The Retainer Agreement will be in effect for a two (2) year period, with the option to renew up to three additional one year periods. The total term of the Retainer Agreement is not to exceed five (5) years. Following execution of the Retainer Agreement, the City will negotiate separate Project Contracts (Attachment B), as needed, with individual consultants for specific classes or services. Project Contracts will identify the type of services, scope of work, fee, and terms of payment for services.

The City will maintain a list of all consultants selected and placed on Retainer Agreement as part of this RFQ process. The Project Contracts generated from this list will be at the discretion of the City and will be dependent on the City's perception as to what best meets the needs of the City. As the need may arise, the City reserves the right to award work covered under this solicitation using a different procurement method, if use of such alternative solicitation process for the particular project is deemed by the City to be in the best interest of the City.

Services will be obtained on an as-needed basis and the City makes no representations as to the actual amount of service, if any, to be obtained from any particular consultant.

Consultants selected and placed on Retainer Agreement will not be guaranteed a minimum level of work and shall agree to be responsive to requests for training, facilitation, or organization development services.

SECTION 2: SCOPE OF WORK

2.1 Scope of Work

The City schedules professional development sessions, as needed, to cultivate leadership and provide for the developmental needs and professional growth of employees and work groups. The City is seeking consultants to deliver training and/or facilitate sessions that support one or more of the competencies listed below. The competencies provide staff throughout the organization with a guide for continuous and measurable professional learning and growth that is focused on achieving organizational objectives and community goals.

The City anticipates selecting multiple consultants to place on Retainer Agreement to achieve a mix of professional development classes that will support staff development in the following five competency areas:

1. Leads with respect and integrity
2. Collaborates with individuals, teams, and other departments
3. Promotes and engages in two-way communication
4. Develops the knowledge, skills, and abilities of self and City staff
5. Achieves results for the community

For each workshop, class, or facilitated session within a Consultant's proposal, Consultant should identify how the training will further development in one or more competency areas. The number of classes offered in a fiscal year will be determined by the needs of the City, work groups, and individual employees. Classes may be held at one or more of the City's facilities.

2.2 Competency Areas

- a. **Leads with respect and integrity:** Workshops, classes and/or facilitated sessions will focus on such things as leading with consistency, setting a personal example of what is expected, modeling respectful behavior, following through on promises and commitments, and accepting personal accountability.
- b. **Collaborates with individuals, teams, and other departments:** Workshops, classes and/or facilitated sessions will focus on such things as fostering teamwork to drive innovation, collaborative decision-making, and building cooperative relationships.
- c. **Promotes and engages in two-way communication:** Workshops, classes and/or facilitated sessions will focus on such things as methods of engaging staff, active listening, giving and receiving feedback, recognizing and showing appreciation, encouraging free expression.
- d. **Develops the knowledge, skills, and abilities of self and City staff:** Workshops, classes and/or facilitated sessions will focus on such things as providing coaching and guidance, supporting others in applying newly acquired skills and knowledge, and delegating to broaden the knowledge, skills and abilities of others.

- e. **Achieves results for the community:** Workshops, classes and/or facilitated sessions will focus on such things as leading and coping with change, being inclusive, continuous improvement, and relationship building.

2.3 General Requirements

Class size will range from 10-30 participants and will include a cross-section of City of Beaverton departments or work groups. The number of classes offered during the year will vary based on demand and available budget.

It is the general practice of the City to limit professional development classes to four hours on any given day, unless consultant travel or other circumstances dictate that a class be longer. If a class is longer than four hours it is the preference of the City to hold it in several sessions, allowing staff to balance training with their workload. Consultants should address if and how they are able to accommodate the City's preferences in this respect.

It is the preference of the City to reproduce all workbooks and training materials in-house. In the event this is not possible, Consultants should include the cost of workbooks, and any other materials used, in the price of the training. It is the preference of the City to use recycled materials to the extent practicable. Consultants able to utilize recycled paper and products for the production of all printed and photocopied documents and workbooks are encouraged to show this in their proposal and to use such products whenever possible in the fulfillment of any contract(s) arising from this RFQ.

Customization and delivery costs should be listed separately in the cost schedule of the proposal. Facilitation and organization development services should be quoted on an hourly basis.

Consultants will provide class modifications as needed, including, but not limited to, modifications identified in the post-class evaluation process. The modification process may also include meeting with City staff, reviewing content of previous training, reviewing practices and procedures, and adjusting the training as a result of this process. The proposal must include costs necessary for routine course modification and adaptation to diverse groups of participants.

Classes should typically be interactive and skill-based and be immediately applicable to real work and workplace issues. Proposer(s) should describe any pre and post skill assessment tools, or any follow-up, that will be used to measure whether information was received, understood, and applied.

2.4 Schedule of Work

Services from this procurement process will be initiated on an as-needed basis. Following execution of the Retainer Agreement, the City will negotiate separate Project Contracts (Attachment B), as needed, with individual consultants for specific classes or services. Project Contracts will identify the type of services, scope of work, fee, and terms of payment for services.

2.5 Procurement Timeline

The City reserves the right to modify this schedule at the City's discretion. Proper notification of changes will be made to all interested parties.

<u>Event</u>	<u>Completion Date & Time</u>
Advertisement and Release of Proposals	August 14, 2012
Deadline for RFQ Protests or Requests for Changes	August 28, 2012 at 4:00 PM
Deadline for Submission of Proposals	September 7, 2012
Interviews (if necessary)	September 17-21, 2012
Award of Contract by Contract Review Board	October 9, 2012
Commencement of Services	October 12, 2012

2.6 Pre-Qualification of Proposers

Pre-qualification of proposers is not required for this procurement.

2.7 Pre-Proposal Conference

No pre-proposal conference will be held in connection with this procurement. Questions regarding this RFQ shall be directed to Terry Muralt, Purchasing Agent, at 503-526-2229 or tmuralt@beavertonoregon.gov. See Section V of this RFQ (Questions, Clarification, Modifications and Protests), below, for further information regarding how Proposers may ask questions, seek clarifications and request changes to this RFQ.

2.8 Single Point of Contact

All questions or requests regarding the procurement process shall be directed to Terry Muralt, Beaverton Purchasing Agent, at (503) 526-2229 or tmuralt@beavertonoregon.gov. The RFQ document may be reviewed upon request at the Beaverton City Hall, 4755 SW Griffith Dr., Beaverton, Oregon 97005.

SECTION 3: PROPOSER'S SPECIAL INSTRUCTIONS

3.1 Procurement Method

The City is conducting this RFQ pursuant to ORS 279A.050 and Beaverton Purchasing Code section 46-0100. The City seeks proposals that will enable the City to determine which service provider(s) and solution(s) will best meet the City's needs. The City expects this RFQ will result in award of multiple retainer agreements.

3.2 Proposals not available for Public Inspection at the Opening

No formal opening will occur in connection with this procurement. In accordance with ORS 279B.060(6)(a) only the names of the proposers shall be disclosed at the opening. Notwithstanding ORS 192.410 to 192.505, proposals are not required to be open for public inspection until after the notice of intent to award a contract is issued.

3.2.1 Distribution of proposals

The City intends to publish the names of all Proposers on its Website within 24 hours of the opening of Proposals. Proposals will be distributed to members of the City's evaluation team. In submitting a proposal, each Proposer agrees that the City may post the proposal on the City's intranet for evaluation and ranking and reveal any trade secret or other confidential materials contained in the proposal to City staff and to any outside consultant or third party retained by the City for purposes of evaluating and ranking proposals.

3.2.2 Proposal validity period

Each proposal shall be irrevocable for a period of ninety (90) days from the date of the scheduled proposal opening.

3.2.3 Withdrawal of proposals

If a Proposer wishes to withdraw a submitted proposal, it shall do so prior to the Closing date and time. The Proposer shall submit a written request to withdraw, signed by the Proposer, on the Proposer's letterhead, to the Purchasing Agent at the address listed on the front page of the RFQ, as required by Beaverton Purchasing Code section 47-0440(2).

3.2.4 Cost of preparing proposals

All costs incurred in preparing and submitting a proposal in response to the RFQ is the responsibility of the Proposer and shall not be reimbursed by City.

3.3 Interpretations and Addenda

All questions regarding this project proposal shall be directed to Terry Muralt, Purchasing Agent, at either 503-526-2229 or tmuralt@beavertonoregon.gov. If necessary, interpretations or clarifications in response to such questions will be made by issuance of an addendum to all prospective Proposers within a reasonable time prior to proposal closing, but in no case less than 72 hours before the proposal closing. If an addendum is necessary after that time, the City will extend the closing date.

Proposers are responsible for checking for addenda on the City's Website. Proposers should visit the City's website in order to register to receive e-mail notification of any addenda issued for this specific proposal document. Upon receipt of the e-mail notification, proposers are responsible to

download the document from the “Current Bid & Proposal Opportunities” site at www.beavertonoregon.gov/bids.

Any addendum issued as a result of any change in the RFQ must be acknowledged on the “Signature Page” with proposal.

Only questions answered by formal written addenda are binding. Oral and other interpretations or clarifications are without legal effect.

3.4 Protests

Address any protests to:

City of Beaverton
Protest of Solicitation #2706-13B
Terry Mural, CPPB, Purchasing Agent
4755 SW Griffith Drive
Beaverton, OR 97005

3.5 Specification/Term Protest

Ambiguities or problems with this RFQ, its contract terms or specifications may be resolved by asking questions, seeking clarification, requesting changes or by filing a formal protest. Information provided below describes the appropriate process to pursue these options, should the need arise.

3.5.1 RFQ Protest or Request for Change of Specifications or Terms

A proposer who believes any proposal specifications or terms detailed in this RFQ (including its Addenda, if any) are unnecessarily restrictive or limit competition may submit a protest or request for change, in writing, to the Purchasing Office. A request for change regarding the terms of this RFQ may be submitted via facsimile. Any protest or request for change regarding the terms of this RFQ shall include the reasons for the protest or request and shall detail any proposed changes to the specifications or terms. The Purchasing Office shall respond to any protest or request for change and, where appropriate, shall issue any revisions, substitutions, or clarification via addenda to all interested Proposers. To be considered, protests or requests for change regarding the terms of this RFQ must be received by **4:00 PM on August 28, 2012 and properly mark whether it is a protest or request for change of specifications or terms.** If a timely protest or request for change regarding the terms of this RFQ is received, the proposal opening date may be extended if necessary to allow consideration of the protest or request for change and issuance of any necessary addenda to the proposal documents.

3.5.2 Exclusion Protest

Upon City’s issuance of the notice of (a) Proposers to be interviewed or (b) Proposers invited to engage in discussion, a Proposer may protest its exclusion from the top tier as set forth in Beaverton Purchasing Code section 47-0720. An Affected Proposer may protest, for any of the bases set forth in Beaverton Purchasing Code section 47-0720(B). Failure to so protest shall be considered the Proposer’s failure to pursue an administrative remedy made available to the Proposer by the City.

3.5.3 Intent to Award Protest

City intends to announce its intent to award prior to Contract award by posting the tabulation sheet of Proposal results and Intent to Award Letter on the City's Web site and/or by letter or email to Proposers. The notice shall serve as notice to all Proposers that the City intends to negotiate and to make an award. Adversely affected or aggrieved Proposers shall have seven (7) calendar days from the date of the Intent-to-Award Notice within which to file a written protest. Protests submitted after that date shall not be accepted. Protests shall specify the grounds upon which the protest is based. (Refer to Beaverton Purchasing Code section 47-0740.) Failure to so protest shall be considered the Proposer's failure to pursue an administrative remedy made available to the Proposer by the City. City intends to respond in writing to properly-filed intent-to-award protests submitted by adversely affected or aggrieved Proposers. Any response provided by City, however, is not intended to, and may not in and of itself constitute, confirmation that the Proposer is in fact adversely affected or aggrieved and therefore entitled to protest intent to award. After expiration of the seven (7) calendar-day intent-to-award protest period and resolution of all protests, City intends to proceed with negotiations and, where appropriate, the final award(s).

3.6 Business License/Taxpayer ID Number

A Proposer awarded a contract shall obtain a City business license as required by Beaverton Code section 7.01 prior to beginning work under this contract and must pay all fees due under the Business License Law during the term of the contract.

A Proposer awarded a contract shall complete an IRS Form W-9 for the City and provide the City with either the Proposer's Social Security Number or federal taxpayer ID number. This number is requested pursuant to BPC 47-0636 of the Beaverton Purchasing Code (Resolution 3917, as amended). Social Security numbers provided pursuant to this requirement will be used for the administration of state, federal and local tax laws.

3.7 Contract Administrator

The Contract Administrator will be Angela Coffey, who can be reached by telephone at 503-526-2522 or by e-mail at acoffey@beavertonoregon.gov.

3.8 Form of Contract

Each selected consultant will be required to execute a Retainer Agreement included as "**Attachment A**" committing to provide the services proposed with the personnel and for the rates listed in the proposal during the term of the Retainer Agreement. The Retainer Agreement will incorporate the terms and conditions from this RFQ document and the submitted proposal. **Consultants taking exception to any of the terms shall submit a request for change WITH THEIR PROPOSAL or the exceptions will be deemed waived.** The Project Contract is included as "**Attachment B**". The City will negotiate separate Project Contracts, as needed, with individual consultants for specific classes or services. Project Contracts will identify the type of services, scope of work, fee, and terms of payment for services. The City Attorney will review all requests for changes and may or may not accept the requested exceptions. The City is hereby expressly authorized to engage in serial negotiation of the excepted contract terms pursuant to BPC 47-0261(H).

3.9 Term of Contract & Availability of Funds

A contract awarded is expected to commence on or about October 12, 2012. It is the City's intent to execute a Retainer Agreement with selected consultants for a two (2) year period with the option to renew up to three (3) additional one year periods. The total term is not to exceed five (5) years.

Any contract awarded pursuant to the RFQ that has a term of more than one year must include a non-appropriation clause. Continuation or extension of the contract after the end of the fiscal period in which the contract takes effect shall be contingent upon a new appropriation for each succeeding fiscal period. If sufficient funds are not provided in future City Council-approved budgets of City (or from applicable federal, state, or other sources) to permit City in the exercise of its reasonable administrative discretion to continue the contract, City may terminate the contract without further liability by giving Proposer reasonable notice.

3.10 Intergovernmental Permissive Cooperative Procurements

Pursuant to ORS 279A.215 and City of Beaverton procurement rules, other public agencies may purchase goods and services under the terms, conditions and prices of any contract resulting from this solicitation if the Consultant agrees to extend the terms, conditions and prices of the contract resulting from this solicitation to such agencies.

Any such purchases shall be between the Consultant and the participating public agency and shall not impact the Contractor's obligation to City of Beaverton. Any estimated purchase volumes listed herein do not include estimated purchase volumes of other public agencies. City of Beaverton makes no representation or guarantee as to the volume of such additional purchases by other public agencies.

Any proposer, by written notification included with their solicitation response, may decline to extend the terms, conditions and prices of a resultant contract to any and/or all other public agencies.

3.11 Nondiscrimination

The consultant agrees that, in performing the work called for by this proposal, consultant shall comply with all federal, state and local civil rights and rehabilitation laws prohibiting discrimination because of race, sex, national origin, religion, age or disability, or any of the protected classes, and shall comply with all applicable provisions of ORS 279C.500 through 279C.565.

3.12 Public Records

If it is necessary to submit trade secrets or other confidential information in order to comply with the terms and conditions of this RFQ, Proposers shall label any information that it wishes to protect from disclosure to third parties as a trade secret under ORS 192.501(2) with the following: **"This material constitutes a trade secret under ORS 192.501(2) and is not to be disclosed except as required by law."** Each page containing the trade secret or other confidential information must be so marked.

The City shall take reasonable measures to hold in confidence all such labeled information, but shall not be liable for release of any information when required by law or court order to do so, whether pursuant to the Oregon Public Records Law or otherwise and shall also be immune from liability for disclosure or release of information under the circumstances set out in ORS 646.473(3).

In submitting a proposal, each proposer agrees that the City may; (a) reveal any trade secret or other confidential materials contained in the proposal to City staff and to any outside consultant or third party who is hired by the City and (b) post the proposal on the City's intranet for purposes related to its evaluation and ranking. Furthermore, each proposer agrees to indemnify and hold harmless the City and each of its officers, employees, and agents from all costs, damages, and expenses incurred in connection with refusing to disclose any material that the proposer has designated as a trade secret and/or as confidential information. Any proposer that designates its entire proposal as a trade secret may be disqualified.

3.13 Insurance Coverage

The City of Beaverton's required insurance coverage is described in the Retainer Agreement and Project Contract contained in Attachment A and B. Insurance coverage includes the following categories of insurance:

1. Workers' Compensation
2. Comprehensive general liability
3. Automobile liability
4. Professional liability - Errors and Omissions

Provide a statement indicating that the firm has in effect or can obtain the insurance coverage required by the City (do not provide insurance certificates with the proposal). If the proposer is unable to provide this coverage, the proposer must describe the insurance coverage that can be provided, and explain why the City's preferred coverage cannot be provided. Under such circumstances, proposer shall propose alternative terms and conditions in lieu of the terms and conditions the City has identified in the attached personal services contract.

The selected consultants shall provide satisfactory proof of insurance for all coverage. Moreover, on all insurance the selected consultant shall name the City, its officials, employees, and agents, as additional insureds (except workers' compensation, professional liability and professional errors and omissions policies). Affirmatively state that proposer can comply with these two requirements or explain why such an affirmation cannot be provided.

The minimum required annual limit on aggregate claims for professional liability insurance is \$2 million.

SECTION 4: PROPOSAL CONTENT & FORMAT

Proposals must address all submission requirements set forth in this RFQ, and must describe how the services will be provided. Page limits are noted, when relevant, and assume 8 1/2 x 11 – inch paper and single-spaced lines. Unless otherwise specified, no particular form is required. In order to be considered for selection and possible contract, the proposal must be complete and include the following. Joint proposals will not be accepted. Proposals that merely offer to provide services as stated in this RFQ will be considered non-responsive.

4.1 Proposal Format and Administrative Requirements

The City's proposal format and administrative requirements are set out below. These are intended to facilitate the City's ability to quickly and accurately evaluate proposals. Failure to follow these format and administrative requirements may affect the scoring of proposals.

4.1.1 Cover Page

Include a cover page with the submitted proposal. Include the following information on the cover page:

- The RFQ Title;
- The name, title, address, telephone number, fax number, e-mail address of Proposer's primary contact person; and
- The date of submission.

In addition to the above information, but not in lieu thereof, Proposers may include other information on the cover page.

4.1.2 Table of Contents

Include a table of contents with the submitted proposal. All material items comprising the proposal should be clearly identified and easily located.

4.1.3 Transmittal Letter

Include a transmittal letter with the proposal, not exceeding two pages in length. The letter should include the following:

- Identify by name and contact information the one person Proposer wishes the City to contact after proposals have been evaluated, scored and ranked
- A brief statement of the Proposer's understanding of the project and services to be performed
- A positive commitment to perform the services; and
- The letter may include any other information or insights the proposer deems relevant, but in no instance may the letter exceed two pages in length.

4.1.4 Signature Page

The Proposer must sign and submit the Signature Page (see Section 6 of this RFQ). The submission and signing of the signature page indicates the intention of the Proposer to adhere to the provisions described in this RFQ.

4.1.5 Page Limit

There is no page limit on proposals submitted in response to this procurement.

4.1.6 Commitment to Sustainability

In an effort to promote greater use of recycled and environmentally preferable products and to minimize waste, the City encourages all proposals submitted in hard copy be prepared simply and economically. The use of special bindings, unnecessary colored displays and irrelevant promotional materials is neither required nor desired. Double-sided printing on recycled paper and/or the use of reusable products is preferred.

4.1.7 Proposal Submittal Addresses and Number of Original and Copies

Submissions in response to the RFQ shall contain one signed original and two (2) complete paper copies. Submit the proposal and 2 copies in one sealed envelope. The name and address of the Proposer must appear on the outside of the envelope. Additionally, in the lower left-hand corner of the outside envelope print or type the following:

<p style="text-align: center;">RFQ – Professional Development Training, Facilitation & Organization Development Services #2706-13B Close: September 7, 2012 @ 2:00 PM</p>
--

Proposals delivered by the U.S. Postal Service shall be addressed and mailed to:

Terry Muralt
Purchasing Agent
PO Box 4755
Beaverton, OR 97076

Proposals delivered by a delivery service other than the U.S. Postal Service shall be addressed and delivered to:

Terry Muralt
Purchasing Agent
4755 SW Griffith Drive
Beaverton, OR 97005

Under exigent circumstances, proposals may be addressed to Terry Muralt, Purchasing Agent, and hand delivered to any clerk at the Beaverton Finance Department's utility billing counter located on the second floor of City Hall, 4755 SW Griffith Drive, Beaverton, Oregon. Hand delivery to any other location in City Hall will delay the official receipt of the proposal by the City's Purchasing Agent. Proposals received after the designated time and date will be returned unopened. **The City does not accept proposals delivered by e-mail or facsimile transmission.**

4.1.8 Submission Deadline

Sealed proposals will be received until 2:00 PM on September 7, 2012. Late, faxed or electronically transmitted proposals shall not be accepted.

4.2. Minimum Requirements

In order to be considered, proposals at a minimum shall contain the following:

- A detailed outline of the curricula to be delivered (if responding to the professional development training portion of the RFQ). Please also include a summary of the class and a list of class objectives.
- A description of how the curricula, facilitation, and/or organizational development services support staff development in the Competency Areas as described in Section 2.2.
- A description of the Proposer's cancellation policy (if responding to the professional development training portion of the RFQ.)

The scoring for this area reflects overall curricula of workshops and classes included in proposal and how well it supports staff development in the five competency areas outlined in Section 2.1 Scope of Work. The scoring will also reflect any deliverables proposed from facilitation or organization development services.

4.3 Substantive Requirements

The following information is requested to allow the City to evaluate Proposer responsibility and responsiveness to perform work described under the "Scope of Work" heading. If a contract is awarded, City shall award the contract to the responsible Proposer whose proposal it determines in writing to be the most advantageous to the City based on the evaluation process and evaluation factors described in Section 5 of this RFQ, any applicable preferences described in ORS 279A.120 and 279A.125 and, when applicable, the outcome of any negotiations authorized by the RFQ. Other factors may not be used in the evaluation.

4.3.1 Knowledge and Experience

Provide the following:

4.3.1.1 Background of the Firm

A comprehensive history of your firm and its experience in providing the training and/or services being proposed by Proposer. This should include specifics relative to providing such training and/or services in the public sector. Under this heading, include the following information:

- Total number of years the firm has been in business, the general scope of services the firm provides, the current number of employees, and current principal areas of expertise.
- A description of similar work performed involving the items called out in the Scope of Work.
- Background and experience as it relates to the elements being responded to in this RFQ - delivering curricula, facilitating sessions, and/or providing organization development services. Consultant should include the number of years' experience.

4.3.1.2 Key Personnel

Identify by name and title, the key staff members who will be assigned to work with the City, if the City awards the proposer the contract contemplated by the RFQ. Key staff members are those people who provide substantive work for the City. Provide a biography for each identified key staff person. Biography must include, but need to be limited to, a description of the education, qualifications, experience, and training of each key staff person. The description would likely include information about the key staff person's work history, range of duties, project management history, key responsibilities on previous projects and any professional designations, licenses or certifications. Under this heading, include the following information (five pages maximum):

- A resume of consultant(s) and/or key personnel providing training, facilitation, and/or organization development services, showing such education and experience as may be relevant to the work they will be doing. The resume should demonstrate the consultant(s) practical experience and technical expertise in the subject area(s) and, if delivering curricula, experience in general training delivery and in delivering training in the specific subject(s) being responded to in this RFQ.
- Proposals should clearly identify who will be delivering content, or providing facilitation or organization development services. The qualifications of these key personnel will be part of the proposal evaluation process. The City may choose not to enter into a Project Contract, or may terminate a Project Contract, if the key personnel are substituted with other personnel after the proposal has been submitted and selected.

4.3.1.3 Subcontractor Qualifications

A statement whether you intend to use subcontractors to fulfill any part of the tasks described under the scope of work. To the extent you intend to use subcontractors to fulfill any of the required tasks, include the following information:

- A description of the subcontractor's role.
- A resume for the subcontractor's key personnel, showing such education and experience as may be relevant to the training or services to be performed.

4.3.2 Relevant Experience and References

List a minimum of three to a maximum of five organizations in which you delivered work specific to the training, or to the facilitation or organization development services to which you are responding. Reference list should state reference's company name, address, contact name and title, phone number, email address, and description of the service provided to the reference.

4.3.3 Cost Schedule

Please provide a statement of costs. The statement may include one or all of the following depending upon the proposal:

Professional Development Training

- Full day rate for professional development training (to include all class materials and class modifications [as needed]).
- Half day rate for professional development training (to include all class materials and class modifications [as needed]).
- Hourly rate for professional development training if not a half day or full day class (to include all class materials and class modifications [as needed]).
- Hourly rate for class customization.
- Hourly rate for customized curriculum development.

Facilitation Services

- Full day rate for facilitation services.
- Half day rate for facilitation services.
- Hourly rate for facilitation services.

Consultation and Organization Development Services

- Full day rate for consultation and organization development services.
- Half day rate for consultation and organization development services.
- Hourly rate for consultation and organization development services.

Additional Costs

- A not-to-exceed amount for consultant travel to a City facility if not included in the rates above.
- Support work rate for professional development training, facilitation and/or organization development services (prep work, reporting, etc.)

The Cost Schedule submitted with proposal shall remain in effect throughout the two (2) year term of the Retainer Agreement. For the third, fourth and fifth year of the agreement, the billing rate for each service listed on the Cost Schedule shall be adjusted on July 1 of each year. The adjustment shall be based on the increase or decrease of the United States Bureau of Labor Statistics' Consumer Price Index for all Urban Wage Earners and Clerical Workers (CPI-W), US City Average, or its successor report issued by the Federal Government covering the change for the year ending in April as follows:

- The third term (if contract extended) July 1, 2014, to June 30, 2015, adjusted for the CPI-W US City Average Percent Change year ending April 2014.
- The fourth term (if contract extended) July 1, 2015, to June 30, 2016, adjusted for the CPI-W US City Average Percent Change year ending April 2015.
- The fifth term (if contract extended) July 1, 2016 to June 30, 2017, adjusted for the CPI-W US City Average Percent Change year ending April 2017.

For the third, fourth and fifth year of the agreement, a revised Cost Schedule shall be submitted to Terry Muralt, Purchasing Agent, at tmuralt@beavertonoregon.gov, by no later

two weeks prior to the effective date of the new agreement. The City may, at its sole discretion, accept or reject any proposed change in cost schedule beyond the scope of adjustments described in this section.

It should be assumed that all professional development training, facilitation, and organization development services will take place at a City of Beaverton facility.

4.3.4 Availability to Provide Services

Submit a summary of consultant(s) availability to perform services on an as-needed basis, considering the consultant's planned workload, and willingness to schedule professional development training (if applicable) up to nine months in advance of actual class date.

SECTION 5: PROPOSAL EVALUATION & CONTRACT AWARD

5.1 Evaluation Criteria

A selection committee of City staff with relevant expertise in the subject matter of this solicitation will review submitted proposals. Committee members will evaluate proposals to determine which best meet the needs of the City. Evaluation will be based on the following described criteria.

Evaluation Factors	Maximum Points Available
Signature Page	Pass/Fail
Transmittal Letter	Pass/Fail
Minimum Requirements (Curricula/Deliverables)	35
Knowledge & Experience (Proposer Qualifications)	35
Cost Schedule (Rates)	20
Availability to Provide Services	10
Total Points Available	100

Failure to include a signature page and transmittal letter will result in an incomplete proposal, but will not automatically eliminate the proposal from further consideration.

Consultants scoring 75 points or greater will be placed on retainer agreement.

5.2 Preferences

The following preferences are applicable to this procurement and may affect the evaluation of proposals.

5.2.1 ORS 279A.120

If City receives proposals identical in price, availability and quality and chooses to award a contract, City shall award the contract in accordance with ORS 279A.120 and the procedures outlined in Beaverton Purchasing Code section 46-0300.

5.2.2 ORS 279A.125

When evaluating proposals, City shall add a percentage increase to a Price proposal of a non-resident Proposer equal to the percentage, if any, of the preference that would be given to that Proposer in the state in which Proposer resides, in accordance with ORS 279A.125 and the procedures outlined in Beaverton Purchasing Code section 46-0310.

5.3 Responsiveness and Responsible Determination

As a condition to be awarded a contract, a proposal must be responsive and a Proposer must meet the responsible proposer requirements identified in ORS 279B.110 and Beaverton Purchasing Code section 47-0640.

5.3.1 Responsiveness

To be considered responsive, the Proposal shall substantially comply with all requirements of the RFQ and all prescribed public solicitation procedures. In making such evaluation, City may waive minor informalities and irregularities.

5.3.2 Responsibility

Prior to award of a contract, City intends to evaluate whether the apparent successful Proposer meets the applicable standards of responsibility identified in Beaverton Purchasing Code section 47-0500. In addition, prior to award of a contract, the apparent successful Proposer must be duly licensed and registered as may be required by federal, state and local governments to provide the services described under the “Scope of Work” heading. Submission of a signed Proposal constitutes approval for City to obtain any information City deems necessary to conduct the responsibility evaluation. City shall notify the apparent successful Proposer in writing of any other documentation required. In conducting its responsibility evaluation, City may request information in addition to that already required in the RFQ to the extent the City, in its sole discretion, considers it necessary or advisable. City may postpone the award of the contract after announcement of the apparent successful Proposer in order to complete its investigation and evaluation. The City may provide the apparent successful Proposer a reasonable opportunity to correct any licensing or registration deficiencies, so long as the opportunity does not unduly burden the City. Failure of the apparent successful Proposer to demonstrate Responsibility, as required under Beaverton Purchasing Code section 47-0500, shall render the Proposer non-responsible and constitute grounds for offer rejection, as required under ORS 297B.100.

5.4 Interviews

At the City’s option, consultants may be asked to make a presentation of their proposal. This will provide an opportunity to clarify or elaborate on the proposal, but will not, in any way, provide an opportunity to change any fee amount originally proposed. Final selection would then be based on both written submittals and interview/training demonstrations using the same criteria listed above. The Contract Administrator will schedule the time and location of these interviews/demonstrations (if necessary) and notify the selected consultants. Instructions for the interview process will be given at the time of notification. Interviews will be held in a City of Beaverton conference room at City Hall, 4755 SW Griffith Drive, Beaverton, Oregon.

5.5 Investigation of References

The City reserves the right to investigate references and the past performance of any Proposer with respect to its successful performance of similar training, facilitation, or organization development services; compliance with specifications and contractual obligations; its completion or delivery of services on schedule and its lawful payment of employees and workers.

5.6 Clarification of Proposals

The City reserves the right to obtain clarification of any point in a firm’s proposal or to obtain additional information necessary to properly evaluate a particular proposal, but will not, in any way, provide an opportunity to change any fee amount originally proposed. Failure of a Proposer to respond to such a request for additional information or clarification could result in rejection of the firm’s proposal.

5.7 Contract Award and Related Procedures

The City anticipates placing multiple consultants on Retainer Agreement as a result of this procurement. City generally issues a notice of intent to award in advance of the actual award of a contract procured through a request for qualifications. The period between the publication of the intent to award and the award of the contract varies, but typically is about 14 days.

5.7.1 Award consideration

Whether to award a contract shall be determined by City in its sole and absolute discretion to be in its best interest. City reserves the right to withdraw any and/or all items from award consideration.

5.7.2 Award Recommendation

The Notice of Intent to Award shall be the City's recommendation contained in the agenda item published in the City's Council Agenda. Agendas for Council meetings are posted on the City website at: www.beavertonoregon.gov. The decision by the Contract Review Board to award the contract shall constitute the final decision of the City to award the Contract.

5.7.3 Insurance certification

The apparent successful Proposer shall provide all required proofs of insurance to City within fourteen calendar days of the issuance of the Notice of Intent to Award. Failure to present the required documents within the fourteen calendar-day period may result in proposal rejection or delay of award of contract. Proposers are encouraged to consult their insurance agent(s) about the insurance requirements contained in the RFQ prior to proposal submission.

5.8 Reservation of Rights

City reserves all rights regarding the RFQ, including, without limitation, the right to:

- Amend, delay or cancel the RFQ without liability if City finds it is in the best interest of the City to do so (see generally ORS 279B.100);
- Obtain clarification of any point in proposal or obtain additional information necessary to properly evaluate a particular proposal;
- Reject any or all proposals received upon finding that it is in the best interest of the City to do so (see generally ORS 279B.100);
- Waive any minor informality or non-conformance with the provisions or procedures of the RFQ, and seek clarification of any proposal, if required;
- Reject any proposal that fails substantially to comply with all prescribed RFQ procedures and requirements;
- Negotiate a Statement of Work based on the Scope of Work described herein and to negotiate separately in any manner necessary to serve the best interest of the public;
- Amend any Contracts that are a result of the RFQ; and
- Engage consultants by selection or procurement independent of the RFQ process or any Contracts or agreements under it to perform the same or similar services.

Although price is a consideration in determining the apparent successful Proposer, the intent of the RFQ is to identify a proposal from a Proposer that has a level of specialized skill, knowledge and resources to perform the work described in the RFQ. The Proposer with the lowest Price proposal may not necessarily be awarded a contract. City reserves the sole right to determine the best proposal.

SECTION 6: SIGNATURE PAGE

[FILL OUT AND SUBMIT THIS PAGE WITH YOUR PROPOSAL]

This page must be signed with the full name and address of the Proposer submitting the response; if a partnership, by a member of the firm with the name and address of each member; if a corporation, by an authorized officer thereof in the corporate name.

The undersigned verifies that he/she is a duly authorized officer of the company, and that his/her signature attests that information provided in response to this Request for qualifications Solicitation #2706-13B is accurate.

The undersigned certifies that the proposal has been arrived at independently and has been submitted without any collusion designed to limit competition.

The undersigned certifies that all addenda to the specifications have been received and duly considered and that all cost adjustments associated with the addenda are reflected in this proposal.

Addendum No(s)._____ Acknowledged? ☐ YES / ☐ NO

Resident Proposer as defined in ORS 279A.120(1)?* ☐ YES / ☐ NO

Proposers certify non-discrimination in accordance with ORS 279A.110(4). ☐ YES / ☐ NO

If awarded a contract pursuant to this solicitation, Proposer will extend the terms, conditions and prices of such contract to other public agencies? ☐ YES / ☐ NO

Proposer hereby makes this proposal to furnish goods and services at the price(s) indicated herein in fulfillment of the requirements and specifications of the City as stated in the Request for qualifications.

Signature of Authorized Official

Date

Printed Name

Telephone Number (with area code)

Title

E-mail Address

Firm

City of Beaverton Business License No.

Address

*"Resident Proposer" means a proposer that has paid unemployment taxes or income taxes in this state during the 12 calendar months immediately preceding submission of the bid, has a business address in this state and has stated in the proposal whether the proposer is a resident proposer.

ATTACHMENT "A" – RETAINER AGREEMENT

CITY OF BEAVERTON HUMAN RESOURCES CONSULTANT RETAINER AGREEMENT FOR:

THIS RETAINER AGREEMENT ("Contract") is entered into between the City of Beaverton, Oregon, located at 4755 SW Griffith Drive, P.O. Box 4755, Beaverton, Oregon 97076-4755 ("City") and _____ located at _____ ("Contractor"). The City's primary supervisor for this Contract ("Contract Administrator") is Angela Coffey, Training Coordinator.

THE PARTIES HEREBY AGREE THAT:

1. EFFECTIVE DATE; DURATION. This Contract shall become effective on the date this Contract has been signed by every party hereto and, approved by legal counsel for the City. Unless terminated, the initial term of this Contract shall be two years. Thereafter, the City, at its sole option, may extend the term up to three additional one year terms by providing written notice of the extension to Contractor. The maximum duration of this Contract may not exceed five years.

2. STATEMENT OF WORK. Upon receipt of a request from City, Contractor may respond to the description of the specific services to be rendered; the schedule to be followed; the requirements of the City's participation, if any; and prepare a firm price for the service or a maximum price not to exceed a stated figure, based on the prices for personnel, subsistence, equipment and supplies, and other conditions. Upon mutual acceptance of the scope and cost of service for a particular project ("Project" or "Work"), a Project Contract supplementing this Contract will be prepared to establish these factors and will contain the manner of invoicing, reporting, and other conditions and requirements as may be determined for the Project. Project Contracts will be awarded on an as-needed basis.

3. CONTRACT DOCUMENTS. In the event of a conflict between or among the terms of this instrument, any proposal and/or request for proposals, the following order of precedence shall prevail: (a) this instrument, (b) the Project Contract supplementing this instrument; (c) attached exhibits to this instrument or the Project Contract; (d) the request for proposal, (e) the proposal. Nothing herein shall be considered as an acceptance of the terms of a proposal if the terms of the proposal conflict or are otherwise incompatible with the express terms contained herein or in the City's request for proposal.

Pursuant to ORS 279A.215, other public agencies may establish contracts or price agreements directly with the Contractor under the terms, conditions and prices of the original contract: ☐ Yes; ☐ No.

4. CONSIDERATION. City shall pay Contractor either a sum certain or at a fixed hourly rate for satisfactory accomplishment of the Work required by the Project Contract. A maximum, not-to-exceed amount of compensation payable to Contractor under the Project Contract, which includes any allowable expenses or reimbursement, shall be established and made a part of any Project Contract entered into.

Rates, cost and other fees shall be those set out in the Cost Schedule submitted with Contractor's proposal. The Cost Schedule submitted with the proposal shall remain in effect throughout the first two-year term of this agreement. For the third, fourth and fifth year of the agreement, the billing rate for each position listed on the Cost Schedule shall be adjusted on July 1 of each year. The adjustment shall be based on the increase or decrease of the United States Bureau of Labor Statistics' Consumer Price Index for all Urban Wage Earners and Clerical Workers (CPI-W), US City Average, or its successor report issued by the Federal Government covering the change for the year ending in April as follows:

- The third term (if contract extended) July 1, 2014, to June 30, 2015, adjusted for the CPI-W US City Average Percent Change year ending April 2014.

- The fourth term (if contract extended) July 1, 2015, to June 30, 2016, adjusted for the CPI-W US City Average Percent Change year ending April 2015.
- The fifth term (if contract extended) July 1, 2016 to June 30, 2017, adjusted for the CPI-W US City Average Percent Change year ending April 2017.

City may, at its sole discretion, accept or reject any proposed change in costs beyond the scope of the adjustments described in this section.

5. ASSIGNMENT AND SUBCONTRACTORS. Contractor shall not assign, sell, subcontract, dispose of or transfer rights or delegate duties hereunder, either in whole or in part, without the City's prior written consent; provided, however, that money due to Contractor may be assigned, if the City is given written notice thereof, but any assignment of money shall be subject to all proper setoffs and withholdings in favor of the City. The City may rescind this Retainer Agreement or a subsequent Project Contract if an assignment is made without the prior written consent of the City

The rights hereunder may not be transferred or assigned by operation of law, change of control or merger without the prior written consent of the City. The City may rescind a Retainer Agreement or Project Contract transferred or assigned by operation of law, change of control or merger without the prior written consent of the City.

In no instance shall City's consent to an assignment of rights or delegation of duties relieve Contractor of any obligations hereunder. Any assignee, transferee or subcontractor shall be considered the agent of the Contractor and be bound to abide by all provisions of this Contract. Contractor, and its surety, if any, shall remain liable to City for complete performance of this Contract as if no such assignment, sale, subcontracting, disposal, transfer or delegation had occurred, unless City otherwise agrees in writing. The provisions of this Contract shall be binding upon and shall inure to the benefit of the parties hereto and their respective successors and permitted assigns, if any.

If Work is awarded to a team, the key team members identified in the proposal must serve on the team in the role and at the level of involvement identified in the proposal. Another person may not be substituted for a key team member on a particular project absent the prior written consent of the City. The City may rescind a Retainer Agreement or Project Contract if a substitution of a key team member is made on a particular project without the prior written consent of the City.

6. TERMINATION. The parties may terminate this Contract in the manners indicated:

- Parties' Right to Terminate for Convenience.** This Contract may be terminated at any time by the mutual written consent of the parties.
- City's Right to Terminate for Convenience.** City may, at its sole discretion, terminate this Contract, in whole or in part, upon 30 days' prior written notice to Contractor.
- City's Right to Terminate for Cause.** City may terminate this Contract, in whole or in part, immediately upon notice to Contractor, or at such later date as City may establish in such notice, upon the occurrence of any of the following events:
 - City fails to receive funding, or appropriations, limitations or other expenditure authority at levels sufficient to pay for Contractor's Work;
 - Federal or state laws, regulations or guidelines are modified or interpreted in such a way that either the Work under this Contract is prohibited or City is prohibited from paying for the Work from the planned funding source;
 - Contractor no longer holds any license or certificate that is required to perform the Work; or
 - Contractor commits any material breach or default of any representation, covenant, warranty obligation or agreement under this Contract or fails to perform the Work within the time specified herein or any extension thereof or so fails to pursue the Work as to endanger Contractor's performance under this Contract in accordance with its

terms, and such breach, default or failure is not cured within 10 business days after delivery of City's notice, or such longer period as City may specify in such notice.

- d. **Contractor's Right to Terminate for Cause.** Contractor may terminate this Contract upon 30 days' prior written notice to City if City fails to pay Contractor pursuant to the terms of this Contract and City fails to cure within 30 business days after receipt of Contractor's notice, or such longer period of cure as Contractor may specify in such notice.
- e. **Remedies.** (i) In the event of termination pursuant to subsections a, b, c(i), c(ii) or d, of this Section, Contractor's sole remedy shall be a claim for the sum designated for accomplishing the Work multiplied by the percentage of Work completed and accepted by City, less previous amounts paid and any claim(s) which City has against Contractor. If previous amounts paid to Contractor exceed the amount due to Contractor under this subsection, Contractor shall pay any excess to City upon demand. (ii) In the event of termination pursuant to subsection c(iii) or c(iv) of this Section, City shall have any remedy available to it in law or equity. If it is determined for any reason that Contractor was not in default under subsection c(iii) or c(iv) of this Section, the rights and obligations of the parties shall be the same as if the Contract was terminated pursuant to subsection b of this Section.
- f. **Contractor's Tender upon Termination.** Upon receiving a notice of termination of this Contract, Contractor shall immediately cease all activities under this Contract, unless City expressly directs otherwise in such notice of termination. Upon termination of this Contract, Contractor shall deliver to City all documents, information, works-in-progress and other property that are or would be deliverables had the Contract been completed. Upon City's request, Contractor shall promptly surrender to anyone City designates, all documents, research or objects or other tangible things needed to complete the Work.

7. FORCE MAJEURE. Neither party shall be held responsible for delay or default caused by war, insurrection, acts of terrorism, strikes, lockouts, labor disputes, riots, terrorist acts or other acts of political sabotage, volcanoes, floods earthquakes, fires, acts of God, acts of the public enemy, epidemic, quarantine restrictions, freight embargoes, lack of transportation, governmental restrictions or priorities, severe weather, or any other uncontrollable or unforeseeable act or circumstance beyond a party's reasonable control and without the fault or negligence of the party. The affected party, however, shall make all reasonable efforts to remove or eliminate such cause of delay or default and shall, upon cessation of the cause, diligently pursue performance of its obligations under this Contract. In the event of such delay, the party delayed shall give written notice of the delay and the reason therefor to the other party within 30 days after the delayed party learns of the delaying event. An extension of time for any such cause shall be for the period of duration of the cause. Delays under this paragraph shall not be the basis for additional compensation payable to the Contractor.

8. MODIFICATION. Any modification of the provisions of this Contract shall not be enforceable unless first reduced to writing and signed by both parties. A modification is a written document, contemporaneously executed by City and Contractor, which increases or decreases the cost to City over the agreed sum or changes or modifies the Statement of Services or Delivery Schedule. Any such modification shall be effective only in the specific instance and for the specific purpose identified in the modification. The services of the Contractor with regard to any specific Work requested by the City shall be specified in a Project Contract supplementing this Contract.

In the event that Contractor receives any communication of whatsoever nature from City that Contractor contends gives rise to any modification of this Contract, Contractor shall, within 15 calendar days after receipt, make a written request for modification to City. Contractor's failure to submit such written request for modification in a timely manner is a basis which City may refuse to treat said communication as a modification. In connection with any modification to the Contract affecting any change in price, Contractor shall submit a complete breakdown of labor, material, equipment and other costs. If Contractor incurs additional costs or devotes additional time on project tasks which were reasonably expected as part of the

original Contract or any mutually approved modifications, then City shall be responsible for payment of only those costs for which it has agreed to pay.

9. ACCESS TO RECORDS. Contractor shall maintain all books, documents, papers and records relating to this Contract in accordance with generally accepted accounting principles. In addition, Contractor shall maintain any other records pertinent to this Contract in such a manner as to clearly document Contractor's performance. City, state and federal government, and their duly authorized representatives, shall have access to Contractor's books, documents, papers, plans, writings and records that are directly pertinent to this Contract for the purpose of performing examinations and audits and making excerpts and transcripts. Contractor shall retain and keep accessible all such fiscal records, books, documents, papers, plans, and writings for a minimum of three years from the date of Contract expiration, or such longer period as may be required by applicable law, following final payment and termination of this Contract, or until the conclusion of any audit, controversy or litigation arising out of or related to this Contract, whichever date is later. Contractor is responsible for any audit discrepancies involving deviation from the terms of this Contract and for any commitments or expenditures in excess of amounts authorized by City. The state and federal governments and their duly authorized representatives are intended beneficiaries of the terms of this provision.

10. COMPLIANCE WITH APPLICABLE LAWS. Contractor shall comply with all federal, state and local laws, ordinances, rules, regulations and executive orders applicable to the Work to be performed under this Contract. Failure or neglect on the part of Contractor to comply with any or all such laws, ordinances, rules or regulations shall not relieve Contractor of these obligations or the requirements of this Contract. Without limiting the foregoing, Contractor shall comply with all federal, state and local civil rights and rehabilitation laws prohibiting discrimination because of race, color, sex, national origin, religion, age or disability, and shall comply with all applicable provisions of ORS 279A, 279B and 279C relating to public contracts. The required contract provisions of ORS 279B.220, ORS 279B.225, ORS 279B.230, ORS 279B.235, ORS 279C.505, ORS 279C.510, ORS 279C.515, ORS 279C.520 and ORS 279C.530, ORS 279C.580 and ORS 279C.830 are hereby incorporated herein by this reference and the applicable terms therein shall be binding upon City and Contractor. Contractor shall safeguard consumer personal information pursuant to ORS 646A.600 to 646A.628 (the Oregon Consumer Identity Theft Protection Act). The parties shall comply with any state or federal law or regulation specific to the funding source that supports this Contract.

Contractor shall obtain a City of Beaverton business license as required by BC 7.01 prior to beginning work under this Contract. Contractor shall provide the business license number in the space provided on the Certification and Contract Offer of this Contract. Additionally, Contractor shall pay all fees due under the Business License Law during the full term of this contract. Failure to be in full compliance may result in payments due under this contract to be withheld to satisfy amount due under the Business License Law.

11. INDEPENDENT CONTRACTOR; RESPONSIBILITY FOR TAXES & WITHHOLDING. The Work to be rendered under this Contract is that of an Independent Contractor. Contractor is not an officer, employee, or agent of the City as those terms are used in ORS 30.265 of the Oregon Tort Claims Act, and Contractor is not to be considered an officer, employee or agent of the City for any purpose. Contractor shall be solely and entirely responsible for its acts and for the acts of its agents or employees during the performance of this Contract. As used herein, "Independent Contractor" means that:

- a. Contractor is free from direction and control over the means and manner of providing labor or services, subject only to City's right to specify the desired results.
- b. Contractor is responsible for obtaining all required business registrations or professional occupational licenses.
- c. Contractor furnishes the tools or equipment necessary to perform the contracted labor or services.
- d. Contractor has the authority to hire and fire Contractor's employees.

- e. Contractor is registered under ORS chapter 701 to provide labor or services for which such registration is required.
- f. For labor and services performed as an Independent Contractor in the previous year, Contractor has either filed federal and state income tax returns in the name of Contractor's business or, in the alternative; Contractor has filed a Schedule C tax form as part of Contractor's personal income tax return.
- g. Contractor represents to the public that the labor or services described herein are to be provided by an independently established business.
- h. Payment to the Contractor is made upon completion or periodic completion of the performance required herein, or is made based on a periodic retainer.

Neither Contractor nor any of Contractor's agents or employees is entitled to any of the benefits (including, but not limited to, social security, workers' compensation and unemployment insurance benefits) that City provides its employees. Contractor shall be responsible for all federal or state taxes applicable to compensation or payments paid to Contractor under this Contract. Unless Consultant is subject to backup withholding, City will not withhold from such compensation or payments any amount to cover Contractor's federal or state tax obligations.

12. REPRESENTATIONS AND WARRANTIES; STANDARD OF CARE. Contractor represents and warrants to City that:

- a. If Contractor is an entity (as opposed to a natural person), Contractor is duly organized and validly existing, in good standing under the laws of the jurisdiction of its organization and is duly qualified and authorized to do business and is in good standing in all jurisdictions where it is required to be so qualified.
- b. Contractor has the legal power and authority to:
 - i. Transact the business in which Contractor is engaged and presently proposes to engage and
 - ii. Execute, deliver and perform this Contract.
- c. Contractor has taken all necessary action to authorize the execution, delivery and performance of this Contract.
- d. Contractor has duly executed and delivered this Contract.
- e. The execution, delivery and performance of this Contract by Contractor do not:
 - i. Contravene any applicable provision of any law, statute, rule or regulation, or any order, writ, injunction or decree of any court or governmental entity.
 - ii. Conflict with or result in any breach of any agreement to which Contractor is a party, or
 - iii. Violate any provision of any organizational documents of Contractor if Contractor is an entity (as opposed to a natural person).
- f. No authorization or approval or other action by, and no notice to or filing with, any governmental authority or regulatory body is required for the due execution, deliver and performance by the Contractor of this Contract, other than those that have been
- g. When executed and delivered, this Contract shall constitute the legal, valid and binding obligation of Contractor enforceable in accordance with its terms, except to the extent that the enforceability may be limited by equitable principles and by bankruptcy, insolvency, reorganization, moratorium or similar laws affecting creditors' rights generally.
- h. If Contractor provides personal services under this Contract, the Work under this Contract shall be performed in a good and workmanlike manner;
- i. If Contractor provides professional services under this Contract, the Work under this Contract shall be performed in accordance with generally accepted professional practices and principles and in a manner consistent with the level of care, skill and diligence ordinarily exercised by members of the profession currently practicing under similar conditions; and
- j. Contractor shall, at all times during the term of this Contract, be duly licensed to perform the Work, and if there is no licensing requirement for the profession or Work, be duly qualified and competent.

The warranties as to standard of care set forth in this Section are in addition to, and not in lieu of, any other warranties provided.

13. OWNERSHIP OF WORK PRODUCT. Contractor is an independent contractor for purposes of determining whether Contractor's work product is "work made for hire" under provisions of the U.S. Copyright Act, 17 U.S.C. §§ 101 - 810. If Contractor's work meets the definition of a work made for hire by an independent contractor, then the work shall be considered a work made for hire and the City shall be deemed the work's author. If Contractor's work does not meet the definition of work made for hire by an independent contractor, then Contractor hereby irrevocably assigns and transfers to the City all right, title and interest in such work product, whether arising from copyright, patent, trademark, trade secret, or any other state or federal intellectual property law or doctrines. Contractor waives and releases all rights relating to the use of the work described in or encompassed by the Statement of Work of this Contract, including any rights arising under 17 U.S.C. § 106A. Reuse of work product by City or others for purposes outside the scope of the Statement of Work of this Contract shall be without liability to Contractor. If Contractor is an architect providing professional architectural services, any plans, drawings and other work product produced within the scope of work of this contract are the property of the Contractor; by execution of this Contract, Contractor grants the City an exclusive and irrevocable license to use that work product.

14. Indemnity. With regard to the Contractor's performance in connection with or incidental to the Work, but excluding its performance of professional services and the indemnification and hold harmless aspects thereto as set forth below in this Section, the Contractor shall defend, indemnify, protect and hold the City, its officials, employees, agents and volunteers harmless from and against any and all claims, suits, actions, losses, costs or judgments of any nature for damages or injuries to any person or property, including injury to the Contractor and/or its employees, agents or subcontractors, which arise from or are connected with or are caused or claimed to be caused by the negligent, reckless or willful acts or omissions of the Contractor and/or its employees, agents or subcontractors, in performing Work herein, and all expenses of investigating and defending against same, including reasonable attorney fees and costs at trial and on appeal; provided, however, that the Contractor's duty to indemnify and hold harmless shall not include any claims or liability arising from the established sole negligence or willful misconduct of the City, its officials, employees, agents and volunteers.

With regard to the Contractor's performance of professional services, Contractor shall defend, indemnify and hold harmless the City, its officials, employees, agents and volunteers from and against any and all claims, costs, suits, actions, losses, expenses and damages, including reasonable attorney's fees and costs at trial and on appeal, arising from the willful misconduct or negligent acts, errors or omissions of the Consultant and/or its employees, agents or subconsultants associated with the Work.

15. INSURANCE COVERAGE. The City's Sample Project Contract has several options for types and amounts of required insurance coverage. These options allow the City to tailor insurance coverage to specific project circumstances. The type and amount of insurance coverage actually required for a specific project is determined in conjunction with the letting of a Project Contract.

The following are the minimum kinds and amounts of insurance a contractor must have to be eligible for placement on City's retainer list (insurance must have coverage terms and conditions equivalent to those insurance terms and conditions described in the Sample Project Contract).

•WORKERS' COMPENSATION INSURANCE & EMPLOYER LIABILITY INSURANCE

As required under Oregon law, unless statutorily exempt.

•COMMERCIAL GENERAL LIABILITY INSURANCE

Not less than \$500,000 combined single limit.

•**AUTOMOBILE LIABILITY INSURANCE**

Not less than \$1,000,000 each accident.

•**PROFESSIONAL LIABILITY INSURANCE**

Not less than \$2,000,000 combined single limit per claim with a \$2,000,000 annual aggregate.

Meeting the minimum insurance coverage requirements set out above does not guarantee that for a specific project the City cannot require different coverage or greater amount of coverage consistent with the insurance provisions set forth in the Sample Project Contract.

16. INSURANCE CERTIFICATION; OTHER INSURANCE REQUIREMENTS. Before Contractor commences Work under this Contract, Contractor shall furnish City, through its Risk Manager, with acceptable certificates evidencing the types, amounts and issuers of insurance coverage meeting the minimum requirements of this Contract. The certificate shall specify all of the parties who are Additional Insureds. If a certificate of insurance coverage is unavailable from a particular insurer, alternative proof of insurance coverage acceptable to City shall be arranged. Renewal certificates of insurance shall be furnished no later than 15 days before the expiration of the policy. Any deductibles or self-insured retentions must be stated on the certificate of insurance, which shall be sent to and approved by City's Risk Manager in advance to commencement of Work under this contract.

In all instances concerning all forms of insurance required by this Contract:

- a. The insurance shall be issued by a company authorized to do insurance business in the State of Oregon or by a non-admitted insurer that is subject to the Oregon Surplus Lines Law (ORS 735.400 to 735.495);
- b. Upon request, complete copies of insurance policies, trust agreements etc. shall be provided to City;
- c. Contractor shall be financially responsible for all pertinent deductibles, self-insured retentions and/or self-insurance amounts;
- d. Umbrella or Excess Liability Insurance may be used to achieve the above minimum liability limits, so long as policy is endorsed to state it is "As Broad as Primary Policy." If Umbrella or Excess policy is evidenced to comply with minimum limits, a copy of the Underlying Schedule from the Umbrella or Excess Liability Insurance policy may be required;
- e. Contractor shall provide City not less than 30 days written notice of Contractor's intent to cancel, terminate or make any material change affecting required insurance coverage;
- f. Until such time as the insurance is no longer required by the City, Contractor shall provide the City with renewal or replacement evidence of insurance no less than 30 days before the expiration or replacement of the required insurance. If at any time during the period when insurance is required by the Contract, an insurer shall fail to comply with the requirements of this Contract, as soon as Contractor has knowledge of any such failure, Contractor shall immediately notify the City and immediately replace such insurance with an insurer meeting the requirements
- g. Except for Professional Liability Insurance, the insurance shall be provided by a carrier with A.M. Best's Rating of A- or better and Financial Performance Rating of 7 or better. Contractor's Professional Liability Insurance policy shall be written by an insurer satisfactory to City and may be written on a claims made basis, provided Contractor, at Contractor's own expense, maintains the Professional Liability Insurance in full force for not less 24 months following completion of this Contract; and
- h. The commercial general liability insurance and automobile liability insurance provided by Contractor and its subcontractors shall apply on a primary basis and be required to respond and pay prior to any other available coverage. Any commercial general liability insurance maintained by the City shall be excess of and shall not contribute with the commercial general liability insurance provided by Contractor and its subcontractors.

City reserves the right to review the types of coverages and limits of insurance required herein from time to time. In the event that City changes its insurance requirements after this Contract has been signed, City will provide notice to Contractor of the new requirements. Contractor shall promptly modify its coverage to comply with the new requirements and provide City with updated evidence of coverage. Contractor will be entitled to an adjustment in the Contract price for any increase in premium resulting from such changes, provided Contractor can establish with reasonable certainty that the increased premium was due to changes required by City. Premium savings from any changes shall be refunded to City.

17. Limitation of Liabilities. Neither party shall be liable in contract, tort, strict liability, warranty or otherwise for (i) any special, indirect, incidental, consequential or non-economic damages resulting from or in any way related to this Contract, such as, but not limited to, delay, disruption, loss of product, cost of capital, loss of anticipated profits or revenue, or loss of use of equipment or system, or (ii) any damages of any sort whatsoever arising solely from the termination of this Contract in accordance with its terms; provided, however, the provision of this paragraph do not apply to liability arising under or relating to Section 6(e)(ii)(Termination) or Section 12 (Representations and Warranties; Standard of Care).

18. NOTICE. Except as otherwise expressly provided in this Contract, any communications between the parties hereto or notices to be given hereunder shall be given in writing by personal delivery, facsimile, or mailing the same, postage prepaid, to Contractor or City at the address or number as identified herein above, or to such other addresses or numbers as either party from time to time may designate in writing. Any communication or notice so addressed and mailed shall be deemed to be given five (5) days after mailing. Any communication or notice delivered by facsimile shall be deemed to be given when receipt of the transmission is generated by the transmitting machine. To be effective against City, such facsimile transmission must be confirmed by telephone notice to the Contract Administrator. Any communication or notice by personal delivery shall be deemed to be given when actually delivered.

19. NO THIRD PARTY BENEFICIARIES. City and Contractor are the only parties to this Contract and are the only parties entitled to enforce its terms. Nothing in this Contract gives, is intended to give, or shall be construed to give or provide any benefit or right, whether directly, indirectly or otherwise, to third persons unless such third persons are individually identified by name herein and expressly described as intended beneficiaries of the terms of this Contract.

20. CONFLICT OF INTEREST. Contractor hereby represents that no employee of the City, or any partnership or corporation in which a City employee has an interest, will or has received any remuneration of any description from Contractor, either directly or indirectly, in connection with the letting or performance of this Contract, except as specifically declared in writing.

21. HAZARD COMMUNICATION. To the extent that Contractor provides City with any goods that may release, or otherwise result in exposure to a hazardous chemical under normal conditions of use, Contractor shall provide City with a Material Safety Data Sheet for. In addition, Contractor shall label, tag, or mark such goods.

22. Disclosure of Social Security Number. Contractor must provide Contractor's Social Security Number (SSN) unless Contractor provides an Employer Identification Number (EIN) or other valid form of Taxpayer Identification Number (TIN). SSN is requested pursuant to BPC 47-0636 of the Beaverton Purchasing Code (Resolution 3917, as amended). SSN provided pursuant to this authority will be used for the administration of state, federal and local tax laws. Contractor's TIN will be reported to the Internal Revenue Service (IRS) under the name and TIN submitted. (See IRS 1099 for more information.) Information not matching IRS records may subject Contractor to backup withholding.

23. SURVIVAL. Expiration shall not extinguish or prejudice City's right to enforce this Contract with respect to any breach of a Contractor warranty or any default or defect in Contractor performance that has not been cured. All representations, indemnifications, warranties and guarantees made in, required by or given by the Contractor in accordance with this Contract, as well as all continuing obligations indicated in the Contract, will survive final payment to the Contractor, completion of the Work and termination or completion of the Contract.

24. TIME IS OF THE ESSENCE. Time is of the essence of this Contract.

25. GOVERNING LAW. This Contract is entered into and is to be performed in Oregon and shall be governed and construed in accordance with the laws of the State of Oregon, without resort to any jurisdiction's conflict of laws, rules or doctrines. Any claim, action, suit, or proceeding between City and Contractor arising from or relating to this Contract shall be brought and conducted solely and exclusively within the Circuit Court of Washington County, Oregon, or, if the claim must be brought in a federal forum, the United States District Court for the District of Oregon. Contractor hereby consents to *in personam* jurisdiction of said courts.

26. CAPTIONS. The captions or headings in this Contract are for are for reference purposes only and shall not affect in any way the meaning or interpretation of this Contract.

27. COUNTERPARTS. This Contract may be executed in several counterparts, all of which when taken together shall constitute one agreement binding on all parties, notwithstanding that all parties are not signatories to the same counterpart. Each copy of the Contract so executed shall constitute an original.

28. MERGER. This Contract (including, to the extent provided herein, any attached exhibits or any Project Contract supplementing this Retainer Agreement) constitutes the entire and integrated agreement between the parties and supersedes all prior contracts, negotiations, representations or agreements, either written or oral. There are no understandings, agreements, representations, oral or written, not specified herein regarding this agreement.

29. WAIVER. City's failure to enforce a provision of this Contract shall not constitute a continuing waiver, shall not constitute a relinquishment of City's right to performance in the future and shall not operate as a waiver of City's right to enforce any other provision of this Contract.

30. SEVERABILITY. If any term or provision, or portions thereof, of this Contract is declared by an arbiter or a court of competent jurisdiction to be illegal, invalid, void, or otherwise unenforceable, each such term or provision shall be enforced only to the extent it is not in violation of law or is not otherwise unenforceable; all other provisions and requirements of this Contract shall remain in full force and effect insofar as possible to preserve the lawful anticipated benefits of this Contract to the parties.

Certification

The individual signing on behalf of Contractor hereby certifies and swears under penalty of perjury: (a) Contractor is not subject to backup withholding because (i) Contractor is exempt from backup withholding, (ii) Contractor has not been notified by the IRS that Contractor is subject to backup withholding as a result of a failure to report all interest or dividends, or (iii) the IRS has notified Contractor that Contractor is no longer subject to backup withholding; (b) s/he is authorized to act on behalf of Contractor, s/he has authority and knowledge regarding Contractor's payment of taxes, and to the best of her/his knowledge, Contractor is not in violation of any Oregon tax laws; (c) Contractor is an independent Contractor as defined in ORS 670.600; and (d) the Contractor data set forth herein is true and accurate.

The parties, by their signature below, acknowledge having read and understood the Contract and agree to be bound by its terms and conditions.

AGREED TO BY THE PARTIES HERETO:

CITY OF BEAVERTON, OREGON

CONTRACTOR:

BY: _____

BY: _____

TITLE: _____

TITLE: _____

DATE: _____

DATE: _____

Approved as to legal sufficiency:

ATTACHMENT "B" – PROJECT CONTRACT
CITY OF BEAVERTON
PROJECT CONTRACT
(Insert Project Title)

THIS PROJECT CONTRACT supplements the Retainer Agreement entered into between the City of Beaverton, Oregon, located at 4755 SW Griffith Drive, P.O. Box 4755, Beaverton, Oregon 97076-4755 ("City") and _____ located at _____ (Contractor"). The City's primary supervisor for this Contract is _____.

THE PARTIES AGREE THAT their Retainer Agreement is hereby supplemented as follows:

1. STATEMENT OF WORK. In accordance with the terms and conditions of this Contract, Contractor shall perform the services as scheduled ("Work") and as set forth in Contractor's proposal dated _____, 20__, attached hereto and incorporated herein by this reference (Exhibit A).

Unless terminated or extended, this Contract shall expire when City accepts Contractor's completed performance or on _____, 20__ whichever date occurs first.

2. CONSIDERATION. City shall pay Contractor at an hourly rate based in accordance with the existing Retainer Agreement with the City of Beaverton and the attached (INPUT NAME OF CONSULTANT) current Cost Schedule for satisfactory accomplishment of the Work required by this Contract. The **MAXIMUM, NOT-TO-EXCEED AMOUNT** of compensation payable to Contractor under this Contract, which includes any allowable expenses or reimbursement, is \$_____.

3. BILLING AND PAYMENT SCHEDULE. At least thirty (30) days prior to due date of payment, Contractor shall prepare and submit to **THE CITY OF BEAVERTON, ATTENTION:** _____ an invoice of services rendered. Payment shall be made upon City's approval and acceptance of Contractor's completed Work described herein, whereupon a payment request shall be submitted to City's Finance Department. If this Contract specifies an end product, an amount up to 10 percent of the total sum of money to be paid for the satisfactory accomplishment of the Work may be withheld until all required Work is completed and accepted. If charges are made for services performed and those charges are to be paid from grant funds, the services shall relate directly to the grant from which the funds are expended. Interim payments to Contractor for partial completion of tasks or services may be made only upon prior written authorization of City. When made, interim payment shall release City from any further obligation for payment to Contractor for Work performed or expenses incurred as of the date of the invoice of services rendered.

4. INSURANCE. Contractor, at Contractor's own expense, shall procure and maintain in full force and effect for the duration of Contractor's Work under this Contract the types and coverage amounts of insurance conforming to these minimum requirements:

**WORKERS' COMPENSATION INSURANCE
AND EMPLOYER LIABILITY INSURANCE
Required For All Workers Who Are Not Exempt**

Contractor shall submit proof of Workers' Compensation Insurance for all persons who are "workers" as defined in ORS 656.005. A person who works under the Contractor's direction and control or the Contractor's right to control is a person for whom the Contractor must show proof of coverage unless the "worker" is a "non-subject worker" exempt from workers compensation insurance requirements under ORS 656.027. Out-of-state employers must provide Oregon workers' compensation coverage for their workers who work in Oregon, or show proof of extraterritorial coverage as per ORS 656.126. All Contractors and subcontractors required to procure and maintain Workers' Compensation Insurance shall also procure and maintain in full force and effect for the duration of Contractor's or subcontractor's Work under this Contract

Employer Liability Insurance with a combined single limit, or the equivalent, of not less than \$500,000 each employee per accident for bodily injury by accident or disease.

Contractor shall require and ensure that each of its subcontractors who provide labor or services in connection with this Contract provide Oregon workers' compensation coverage for all their subject workers as required by ORS 656.017 and shall keep on file a certificate of insurance from each subcontractor and anyone else directly employed by either the Contractor or subcontractor.

The Contractor should consult with its own insurance agent to determine if any person who is engaged by Contractor to perform any services under this Contract is a "subject worker" for whom Contractor must provide workers compensation insurance. Contractor may declare itself exempt from this insurance requirement if it is not an "employer" who contracts to pay remuneration for and secures the right to direct and control the services of any person, as per ORS 656.006(13), to perform such services. A Contractor who makes that declaration and who does not provide that insurance may be deemed a non-complying employer under Oregon law. **A contractor who makes that declaration hereby agrees to hold City harmless from and indemnify City against any and all claims for compensation benefits made against the City by subject workers employed by the Contractor to do any of the work of the Contract.** A Contractor who declares itself exempt from providing the Workers Compensation insurance coverage otherwise required by this Contract shall make that declaration in signed and dated writing to be attached to this Contract.

COMMERCIAL GENERAL LIABILITY INSURANCE

☐ Required; ☐ Not Required.

Commercial general liability insurance with a combined single limit, or the equivalent, of not less than ☐ \$1,000,000; ☐ \$2,000,000; or ☐ \$5,000,000 per occurrence with a ☐ \$2,000,000; ☐ \$4,000,000; or ☐ \$10,000,000 annual aggregate limit, covering, but not limited to, liability for personal injury and property damage and aggregate limits shall apply on a per project basis. The policy shall be written on an occurrence basis on ISO Form CG 00 01 (Commercial General Liability Coverage Form), or its equivalent, and shall include contractual liability covering the assumption of the tort liability (including defense costs) of another party by written contract for both ongoing operations and completed operations under this contract. The City of Beaverton and its officials, employees, agents and volunteers shall be named as additional insureds under ISO Form CG 2010 (Additional Insureds – Owners, Lessees or Contractors – Scheduled Person or Organization), or its equivalent, and CG 2037 (Additional Insured – Owners Lessees or Contractors – Completed Operations), or its equivalent, with respect to the Work to be provided under this Contract. The commercial general liability insurance coverage required by this Contract is with respect only to the Work described in this Contract, and has no relationship to, or bearing upon, other projects of the insured and is primary to and non-contributory with any City insurance or self-insurance program.

AUTOMOBILE LIABILITY INSURANCE

☐ Required; ☐ Not Required.

Automobile Liability Insurance on ISO Form CA 00 01 (Business Auto Coverage), or its equivalent, with an each accident limit of not less than ☐ \$1,000,000, or ☐ \$2,000,000 covering, but not limited to, liability for bodily injury and property damage, for "any auto," including owned, non-owned and hired autos used in connection with the performance of the Work. The City of Beaverton and its officials, employees, agents and volunteers shall be named additional insureds under Endorsement CA 20 48 (Designated Insured), or its equivalent. The automobile liability insurance required by this Contract is primary to and non-contributory with any City insurance or self-insurance program; any deductible cannot exceed \$5000. If Contractor is declaring Contractor excused from any requirement to provide Automobile Liability Insurance coverage because Contractor does not use an automobile in connection with Work under this Contract, Contractor may initial here: _____; otherwise Contractor shall procure and maintain the required insurance.

WAIVER OF SUBROGATION

☐ **REQUIRED;** ☐ **NOT REQUIRED.**

If Waiver of Subrogation is required, Contractor hereby waives Contractor's right to recover from the City, and its officers, agents, employees and volunteers for any damages arising out of Work performed under this Contract and covered by insurance. Any Commercial General Liability Insurance policy and/or Automobile Liability Insurance policy required under this Contract shall be endorsed to provide for a waiver of underwriter's rights to subrogation as to additional insureds.

5. AVAILABILITY OF FUNDS. City has sufficient funds currently available and authorized for expenditure to finance costs of this Contract within City's current fiscal period; provided, however, that continuation or extension of the Contract after the end of the fiscal period in which this Contract is written is contingent upon a new appropriation for each succeeding fiscal period. If sufficient funds are not provided in future City Council-approved budgets of City (or from applicable federal, state, or other sources) to permit City in the exercise of its reasonable administrative discretion to continue this Contract, or if City abolishes the program for which benefit this Contract was executed, City may terminate this Contract without further liability by giving Contractor not less than 30 days' notice. In determining the availability of funds, City may use the annual budget adopted for it by its City Council.

6. REUSE OF WORK PRODUCT. Reuse of Work Product by City or others for purposes outside the scope of the statement of work of this Project Contract shall be without liability to Contractor.

7. COMPLIANCE WITH PUBLIC CONTRACT LAWS. Contractor shall comply with all applicable provisions of ORS 279A, 279B and 279C relating to public contracts. The provisions of ORS 279B.220, ORS 279B.225, ORS 279B.230, ORS 279B.235, ORS 279C.505, ORS 279C.510, ORS 279C.515, ORS 279C.520 and ORS 279C.530, ORS 279C.580 and ORS 279C.830 are hereby incorporated herein by this reference and the applicable terms therein shall be binding upon City and Contractor. Contractor shall safeguard consumer personal information pursuant to ORS 646A.600 to 646A.628 (the Oregon Consumer identity Theft Protection Act).

All other provisions of the Retainer Agreement or any amendments thereto remain in full force and effect.

IN WITNESS HEREOF, the parties have duly executed this Project Contract as of the day and year first above written.

CITY OF BEAVERTON, OREGON

CONTRACTOR

BY: _____
Mayor

BY: _____

DATE: _____

TITLE: _____

DATE: _____

Approved as to legal sufficiency:

City of Beaverton Business License #: _____
